

REMARKS

This Amendment is being filed in response to the Final Office Action mailed August 15, 2007, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

By means of the present amendment, claims 1-10 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A'. Claims 1-10 were not amended in order to address issues of patentability and Applicant respectfully reserves all rights under the Doctrine of Equivalents.

In the Office Action, the Examiner objected to the specification and suggested adding headings. Applicant gratefully acknowledges the Examiner's suggestion, however respectfully decline to add the headings as they are not required in accordance with MPEP §608.01(a), and could be inappropriately used in interpreting the specification.

Section headings are not statutorily required for filing a

non-provisional patent application under 35 USC 111(a), but per 37 CFR 1.51(d) are only guidelines that are suggested for applicant's use. (See Miscellaneous Changes in Patent Practice, Response to comments 17 and 18 (Official Gazette, August 13, 1996) [Docket No: 950620162-6014-02] RIN 0651-AA75 ("Section 1.77 is permissive rather than mandatory. ... [T]he Office will not require any application to comply with the format set forth in 1.77").

It is respectfully submitted that "should" as recited in MPEP §608.01(a) is suggestive or permissive, and not mandatory as in "must" or "shall". For example, 37 CFR 1.77(b) recites:

The specification should include the following sections in order: (Emphasis added)

Similarly, 37 CFR 1.77(c) recites:

The text of the specification sections defined in paragraphs (b)(1) through (b)(12) of this section, if applicable, should be preceded by a section heading in uppercase and without underlining or bold type. (Emphasis added)

By contrast, 37 CFR 1.77(b)(5) recites:

(5) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on a compact disc and an incorporation-by-reference of the material on the compact disc (see § 1.52(e)(5)). The total number of compact discs including duplicates and the files on each

compact disc shall be specified. (Emphasis added)

Thus, it is respectfully submitted that a distinction is made between "should" and "shall", where "should" is permissive, and "shall" is mandatory. Accordingly, it is respectfully submitted that headings are not required in accordance with MPEP §608.01(a), and withdrawal of the objection to the specification is respectfully requested.

In the Office Action, claims 1-10 are rejected under 35 U.S.C. §103(a) as allegedly unpatentable over of U.S. Patent No. 6,801,782 (McCrary) in view of U.S. Patent Application Publication No. 2005/0227661 (Ginzburg) and IEEE Standard Dictionary of Electrical and Electronics Terms, page 203 (Jay). It is respectfully submitted that claims 1-23 are patentable over McCrary, Ginzburg and Jay for at least the following reasons.

On page 6 of the Office Action, the Examiner correctly noted that McCrary does not teach or suggest any particular kind of antenna, such as a base station with an antenna having a cosec<sup>2</sup> sensitivity pattern oriented longitudinally, as recited in independent claims 1, 6 and 12. Ginzburg is cited in an attempt to

remedy the deficiencies in McCrady.

It is respectfully submitted that Ginzburg is not prior art to the present application. The present application was PCT filed on November 14, 2003, which designates the U.S. and is published in English as WO 2004/048994, as well as claims the benefit of a British Patent Application filed on November 27, 2002, which is thus the effective filing date of the present application.

As the effective filing date of the present application of November 27, 2002 is before the Ginzburg U.S. filing date of May 30, 2004, Ginzburg is not available as prior art with regard to the present application under 35 U.S.C. §102(e) or 103(a).

Further, McCrady and Jay, alone or in combination, do not teach or suggest the present invention as recited in independent claim 1, and similarly recited in independent claims 6 and 12 which, amongst other patentable elements, recites (illustrative emphasis provided):

providing a base station with an antenna having a cos<sup>2</sup> sensitivity pattern oriented longitudinally;  
determining a relative signal strength of the received ranging signal compared with the transmitted ranging signal to obtain a measure of lateral distance of the base station from the mobile station.

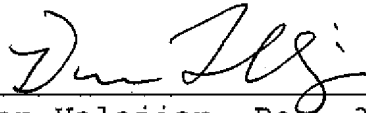
Accordingly, it is respectfully requested that independent claims 1, 6 and 12 be allowed. In addition, it is respectfully submitted that claims 2-5, 7-10 and 11-23 should also be allowed at least based on their dependence from independent claims 1, 6 and 12, as well as their individually patentable elements.

In addition, Applicant denies any statement, position or averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicant reserves the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

Amendment in Reply to Office Action mailed on August 15, 2007

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

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